PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: Atty. Docket No.: 051291.81516

Larren F. Jones, et al.

Serial No.: 09/368,503 | Group Art Unit: 3641

Filed: August 5, 1999 Examiner: C. J. Novosad

For: Wear Assembly for a Digging

Edge of an Excavator Confirmation No.: 5616

Petition Under 37 C.F.R. 1.47

Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.47(a), Applicants hereby petition the Director to accept the enclosed Supplemental Declaration filed concurrently herewith in this reissue patent application. The Supplemental Declaration is executed by two of the three named co-inventors, Robert E. McClanahan and Hezekiah R. Holland, on behalf of themselves and the non-signing third co-inventor, Larren F. Jones, who is now deceased. The Director is authorized to charge the petition fee to Deposit Account 19-0733. The Director also is authorized to charge any additional amount required or credit any overpayment to Deposit Account 19-0733.

As described in more detail below and demonstrated in the accompanying Declaration in Support of Petition Under 37 CFR §1.47 of Daniel T. Jones ("Jones Dec.") and Declaration in Support of Petition Under 37 CFR §1.47 of Holly L. Johnston ("Johnston Dec."), attached hereto as Exhibits 1 and 2, respectively, the deceased co-inventor, Larren F. Jones, died on October 4, 2003 after the original reissue declaration was filed. Under Oregon law, Larren F. Jones's estate

was considered a "small estate," having a value lower than the amount required by state law for the appointment of an administrator. An administrator was not appointed for Larren F. Jones's estate. Further, an heir among Mr. Jones's several heirs -- who collectively would be entitled, in accordance with 35 U.S.C. §117, 37 CFR 1.42, and MPEP 409.01(a), to make the oath or declaration as the legal representative of the deceased inventor -- cannot be found or reached after diligent effort. Therefore, in accordance with 37 CFR §1.47 and MPEP 409.03, the Supplemental Declaration submitted herewith is properly made by the two living co-inventors on behalf of themselves and the deceased co-inventor, and should be accepted.

STATEMENT OF FACTS

- 1. Larren F. Jones died intestate, i.e., without a will, on October 4, 2003 in Hillsboro, Oregon. See Exhibit 1, Jones Dec. at ¶¶1 and 3 and Exhibit A thereto.
- 2. Daniel T. Jones is the brother of the late Larren F. Jones, and served as the small estate affiant for Larren F. Jones's estate upon his death. *See* Exhibit 1, Jones Dec. at ¶¶1 and 3 and Exhibit B thereto.
- 3. Larren F. Jones had five children Robin Morton, Jennifer Harp, Randall Jones, Patrick Jones, and Jeffrey Jones who were identified as heirs to Larren F. Jones's estate at the time of his death. Each of his children holds a twenty percent (20%) interest in his estate. *See* Exhibit 1, Jones Dec. at ¶2 and 4 and Exhibit B thereto; Exhibit 2, Johnston Dec. at ¶4.
- 4. Since about 1992, the whereabouts of one of Larren F. Jones's children, Jeffrey Jones, have been unknown to Daniel Jones and Jeffrey Jones's family, including his siblings. *See* Exhibit 1, Jones Dec. at ¶5.
- 5. Jeffrey Jones is believed to have become a street person in 1992-93. His last known whereabouts are as a street person in California with no known street address. *Id.*

- 6. Since Jeffrey Jones's disappearance, diligent efforts have been undertaken to locate Jeffrey Jones. Jeffrey Jones's family, including Daniel Jones and Jeffrey's sister Robin Morton, conducted searches for Jeffrey, including posting notices in newspapers in California. *See* Exhibit 1, Jones Dec. at ¶6.
- 7. Banner & Witcoff, Ltd., on behalf of ESCO Corporation, the assignee of the present application, also conducted a diligent search for Jeffrey Jones by searching Westlaw databases. Through this searching, Banner & Witcoff located a Jeffrey M. Jones of Astoria, Oregon and a physical address was identified for him. *See* Exhibit 2, Johnston Dec. at ¶6 and 7.
- 8. On May 5, 2009, Holly L. Johnston, an attorney of Banner & Witcoff, Ltd., sent a letter, via certified mail with return receipt requested, to Jeffrey M. Jones in Astoria, Oregon asking that Mr. Jones contact her if he is the son of Larren F. Jones. Banner & Witcoff, Ltd. received the requested return receipt on May 12 or 13, 2009. The return receipt indicated that the letter was delivered on May 11, 2009 and that Jeffrey M. Jones signed for the letter. *See* Exhibit 2, Johnston Dec. at ¶8-9 and Exhibits C and D thereto.
- 9. As of the date of Ms. Johnston's Declaration, no response from Jeffrey M. Jones of Astoria, Oregon had been received, and Jeffrey M. Jones has not been identified as the missing Jeffrey Jones, son and heir of Larren F. Jones. *See* Exhibit 2, Johnston Dec. at ¶10.
- 10. Jeffrey Jones's last known street address is 17145 NW Somerset Drive, Beaverton, Oregon 97006. See Exhibit 1, Jones Dec. at ¶7.

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Applicants have demonstrated that the heirs of deceased co-inventor Larren F. Jones in all of their persons, *i.e.*, the legal representative of the deceased inventor, cannot be found or reached after diligent effort. Accordingly, it is respectfully submitted that this petition is proper under 37 C.F.R. §1.47(a) and M.P.E.P. §§409.03(c), (d) and should be granted.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: July 27, 2009

By: /Charles W. Shifley/

Charles W. Shifley Registration No. 28,042

Ten South Wacker Drive Suite 3000 Chicago, Illinois 60606-7407

Tel: (312) 463-5000 Fax: (312) 463-5001 PETITION UNDER 37 C.F.R. 1.47

EXHIBIT 1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re tl	he Patent Application of:)
	Larren F. Jones, et al.) Atty. Dkt. No.: 051291.81516
	Lairen F. Cones, et al.) Group Art Unit: 3641
Appln	. No.: 09/368,503)
Filed:	August 5, 1999) Examiner: Christopher J. Novosad
) Confirmation No.: 5616
For:	WEAR ASSEMBLY FOR A)
	DIGGING EDGE OF AN EXCAVATOR)

DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47

U.S. Patent and Trademark Office Randolph Building 401 Delaney Street Alexandria, VA 22314

Dear Sir:

- I, Daniel T. Jones, make this declaration based on my personal knowledge and belief:
- 1. I am the brother of the late Larren Frank Jones, a named inventor of U.S. Patent Application No. 09/368,503, filed August 5, 1999. Larren Frank Jones died on October 4, 2003 at Tuality Hospital in Hillsboro, Oregon, as evidenced by his Certificate of Death (Exhibit A).
- 2. Larren Frank Jones fathered five children: (1) Robin Morton; (2) Jennifer Harp; (3) Randall Jones; (4) Patrick Jones; and (5) Jeffrey Jones. I am the uncle of each of Larren's aforementioned children.
- 3. On December 18, 2003, I served as the small estate affiant for his intestate estate upon his death by signing the affidavit required by the State of Oregon for an estate

having a value of the size of Larren Frank Jones' estate (Exhibit B) in my capacity of claiming successor of Larren's estate.

- 4. I stated in the affidavit that Larren Frank Jones had five heirs identified as each of his five children named in paragraph (2) above. Such affidavit also stated that each of his five children had a twenty percent (20%) interest in the property in Larren Frank Jones' estate.
- 5. Since approximately 1992, the whereabouts of one of Larren's sons, Jeffrey Jones, are unknown to me and to his family, including his brothers and sisters listed above. Jeffrey Jones is believed to have become a street person sometime in 1992-1993. Jeffrey Jones' last known whereabouts were as a street person in California with no known street address.
- 6. Since Jeffrey's disappearance in approximately 1992-1993, diligent searching has been performed to locate Jeffrey Jones. Jeffrey's family, including his sister Robin and myself, have performed searches for Jeffrey including posting notices in newspapers in California to attempt to find him. Jeffrey was not located through our efforts and his whereabouts are presently unknown.
- 7. Jeffrey Jones' last known street address is 17145 NW Somerset Drive, Beaverton, Oregon 97006. Jeffrey lived at this street address as a teenager with his father, Larren Frank Jones.

DECLARATION IN LIEU OF OATH

8. I further declare that all information stated herein based upon my own knowledge is true and that all information stated herein based on information and belief is believed to be true, and further that the statements made in this Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that

such willful false statements may jeopardize the validity of this application or any patent issuing based on this application.

Daniel T. Jones

PETITION UNDER 37 C.F.R. 1.47

EXHIBIT 2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re tl	ne Patent Application of:)
) Atty. Dkt. No.: 051291.81516
	Larren F. Jones, et al.) Group Art Unit: 3641
Appln	. No.: 09/368,503)
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Filed:	August 5, 1999)
For:	WEAR ASSEMBLY FOR A) Confirmation No.: 5616
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	DIGGING EDGE OF AN EXCAVATOR)

DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47

U.S. Patent and Trademark Office Randolph Building 401 Delaney Street Alexandria, VA 22314

Dear Sir:

- I, Holly L. Johnston, make this declaration based on my personal knowledge and belief:
- 1. I am an attorney currently employed by the law firm of Banner & Witcoff, Ltd.
- 2. Banner & Witcoff, Ltd. represents ESCO Corp. in the reissue prosecution of U.S. Patent Application No. 09/368,503, filed August 5, 1999. Larren Frank Jones is a named inventor on this patent application.
- 3. Upon my information and belief, Larren Frank Jones died on October 4, 2003 at Tuality Hospital in Beaverton, Oregon as evidenced by his Certificate of Death (Exhibit A).

- 4. Upon my information and belief, Larren Frank Jones had five children: (1) Robin Morton; (2) Jennifer Harp; (3) Randall Jones; (4) Patrick Jones; and (5) Jeffrey Jones. Each of these five children were identified as Larren's heirs at the time of his death and were each afforded a twenty percent (20%) interest in his estate, as evidenced by the Small Estate Affidavit signed by Daniel T. Jones on December 18, 2003 (Exhibit B).
- 5. Upon my information and belief, Jeffrey Jones, son and heir of Larren Frank Jones is presently missing with unknown whereabouts.
- 6. Upon my information and belief, Banner & Witcoff, Ltd., on behalf of ESCO Corp., has performed a diligent search for Jeffrey Jones, son and heir of Larren Frank Jones beginning on April 10, 2009.
- 7. Upon my information and belief, employees of Banner & Witcoff, Ltd. attempted to locate Jeffrey Jones, son and heir of Larren Frank Jones, by searching Westlaw databases. Jeffrey M. Jones of Astoria, Oregon was located through this searching and a physical address was identified for him.
- 8. On May 5, 2009, I sent a certified letter with return receipt requested to Jeffrey M. Jones of Astoria, Oregon requesting that he contact me if he was the son of Larren F. Jones (Exhibit C).
- 9. Sometime on either May 12 or 13, 2009, Banner & Witcoff, Ltd., received the return receipt that was requested on the letter to Jeffrey M. Jones (Exhibit D). The return receipt stated that the letter was delivered on May 11, 2009. The return receipt also stated that Jeffrey M. Jones signed for the letter.
- 10. Up to the present day on which this Declaration is signed, I have not received correspondence from Jeffrey M. Jones of Astoria, Oregon confirming that he is Jeffrey Jones, son and heir of Larren Frank Jones. As of the same date, Jeffrey M. Jones has been unresponsive to my letter. Therefore, I assume that Jeffrey M. Jones of Astoria, Oregon is not Jeffrey Jones, son and heir of Larren Frank Jones.

DECLARATION IN LIEU OF OATH

11. I further declare that all information stated herein based upon my own knowledge is true and that all information stated herein based on information and belief is believed to be true, and further that the statements made in this Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing based on this application.

Date: July 21, 2009.

By: Nally - Jahratery
Holly D. Johnston

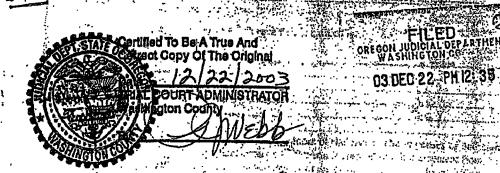
DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47 EXHIBIT A

CERTIFICATE OF DEATH FOR LARREN F. JONES

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DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47 EXHIBIT B

SMALL ESTATE AFFIDAVIT FOR LARREN F. JONES' ESTATE



Page 5 - SMALL ESTATE APPROAVIT, INTESTATE ESTATE.

In the Probate Court of the County of _ Small Estate of: . Estate No. · SMALL ESTATE AFFIDAVIT INTESTATE ESTATE STATE OF OREGON, County of Wilsh , being first duly sworn, depose and say that: I am a claiming successor of the above named decedent. This affidavit is made pursuant to ORS 114.505 to 114.560. (1) Name of Decedent Arren Frank Tones Age 60 Soc. Sec. No.

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(2) Decedent died on 10 14 2 (2) Decedent died on 10 4 5 at the last THE DRY THE E Personal Property Description Fair Market V Cred surrent e (4) No application or petition for the appointment of a personal representative has been granted in Oregon. (5) The decedent died intestate.
(6) Decedent's heirs, and the last address of each as known to affiant, are:

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O A copy of this affidavit showing the date of filing will be delivered to each heir or mailed to each heir at the heir's last kin address stated above.

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DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47 EXHIBIT C

LETTER TO JEFFREY M. JONES



601 S.W. SECOND AVENUE SUITE 1900 PORTLAND, OREGON 97204

TEL: 503.425.6800 FAX: 503.425.6801 www.bannerwitcoff.com

Holly L. Johnston
Direct Dial: (503) 425-6819
hjohnston@bannwitcoff.com

May 5, 2009

Mr. Jeffrey M. Jones 2 McCain Road, Apt. 4 Astoria, Oregon 97103

RE:

ESTATE OF LARREN JONES

Dear Mr. Jones,

We are contacting you to inquire whether you are Jeffrey Jones, son of Larren F. Jones. If you are Larren's son, please contact us. We appreciate your help very much.

Kindest regards,

Holly L. Johnston

PORTLAND, OR

DECLARATION IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.47 EXHIBIT D

RETURN RECEIPT FOR JEFFREY M. JONES' LETTER

		LYCOSKI EBERIAN ENECHAL
	SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
	Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the maliplece, or on the front if space permits. 1, Article Addressed to: Mr. Jeffree M. Jones 2 Mc Cain Road, Apt. Astonia, OR 97103 Astonia, OR 97103	A Shipter Addresse B. Beceived by (Printer Aleme) C. Date of Deliver Strice C. Date of Deliver Strice Strice D. Is delivery address different from item 1? If YES, enter delivery address below:
	Astonia, OR STATE	3. Service Type
		4. Restricted Delivery? (Extra Fee)
•	2. Article Number (Transfer from service label) 7099 3	220 0001 7202 9393

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